

**REMARKS**

**Status of Claims:**

Claims 2-4, 6, 8, and 10-12 are present for examination.

**Rejection Under Sec. 112:**

Claim 5 stand rejected under 35 U.S.C. § 112 as being indefinite. Claim 5 has been amended to remove the ground of rejection.

**Prior Art Rejection:**

Claims 2, 4, 6, 8 and 10-12 stand rejected under 35 U.S.C. § 102 (b) as anticipated by Benveniste (5513379).

The examiner's rejections are respectfully traversed.

Benveniste discloses a dynamic resource allocation apparatus and method using ordered borrowing. It is noted that while Benveniste discloses "resources" including CDMA (column 1, line 62), Benveniste does not disclose using multi-code CDMA which is used when a mobile communication system operates at a rate greater than a data transmission rate per one channel so that data is transmitted in a multi-code transmission where the mobile unit is assigned a plurality of channels and transmits data through the plurality of channels. See applicant's specification at page 1, lines 22-27.

According to applicant's claim 2, as an example, applicant recites:

A cellular system including:

at least two base stations;

a mobile station making communication with said base stations in multi-code CDMA; and

an host station controlling communication made between said base stations and said mobile station,

characterized in that when one of said base stations becomes saturated, said mobile station makes communication in multi-code CDMA through a channel of other base station(s), and

said mobile station, when channels of a base station with which said mobile station makes communication are saturated, stops a part of said communication, and makes the thus stopped part of said communication with other base station(s).

The underlined portions of the above claim 2 serve to distinguish applicant's claim over the prior art. The examiner points to column 6, lines 40-50 and column 6, lines 44-50 of Benveniste to teach these aspects of applicant's claims. However, the cited portions of Benveniste do not provide such a teaching. Benveniste discloses in column 6, lines 26-50:

An illustrative embodiment of data processing equipment included in the OMC or at individual base stations for the assignment and tuning of radio transceivers at the base stations is shown in block schematic form in FIG. 4. A general purpose computer 400 has a stored program included in its memory or other means of data storage 401. This program includes instructions for performing the assignment of radio channels to call requests based on the operational state of the wireless system. Input data is supplied to the program through the input circuit 402 of the computer. Inputs include the call requests, the channel access orders for the base station of each cell, the number of calls in progress, the available channels and the channel reservations which have been made in each cell. Further inputs include interference information usually in the form of a cell-to-cell interference matrix, which defines the interference to each cell from every other cell. The inputs also include system constraints necessary for channel assignment. System constraints include requirements on blocking probabilities, channel adjacency constraints as well as channel availability restrictions. Traffic usage patterns are also supplied as input and are used to determine the initial allocation of channels to cells. Traffic may be measured in real time.

While various parameters, such as system constraints and blocking probabilities are used to make assignments, there is no teaching of a multi-code CDMA system in which the mobile station, when channels of a base station with which the mobile station makes communication are saturated, stops a part of said communication, and makes the thus stopped

part of said communication with other base station(s). Implicit in the language “stops a part of the communication” is the understanding that an ongoing communication is already established between the base station and the mobile station and that some (but not all) of the multi-code CDMA communication channels used by the mobile station are stopped in the existing base station and re-directed to the other base station. Such a teaching is completely missing from Benveniste which is concerned with allocation a call request so that it is set up within the constraints of the dynamically changing system.

Even if Benveniste can be understood to redirect calls to other base stations after such calls are established (and applicant does not admit that Benveniste actually teaches this concept), the reference still fails to show that in a multi-code CDMA system, upon saturation, part of the mobile communication is stopped and the stopped portion is redirected to another base station. As such Benveniste fails to disclose all of the limitation recited in applicant’s claims.

As stated by the Federal Circuit: “A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference” *Verdegaal Bros. v. Union Oil Co. of California*, 814 F.2d 628, 631 (Fed. Cir. 1987). “The identical invention must be shown in as complete detail as is contained in the ... claim.” *Richardson v. Suzuki Motor Co.*, 868 F.2d 1226, 1236, (Fed. Cir. 1989). See MPEP §2131. In order for a reference to be utilized as an anticipatory reference under the provisions of 35 U.S.C. § 102, the reference must disclose each and every claim limitation. This is certainly not the case here, and thus the Sec. 102 rejections as to all claims must be withdrawn.

**Conclusions:**

Applicant believes that the present application is now in condition for allowance. Favorable reconsideration of the application as amended is respectfully requested.


The Examiner is invited to contact the undersigned by telephone if it is felt that a telephone interview would advance the prosecution of the present application.

The Commissioner is hereby authorized to charge any additional fees which may be required regarding this application under 37 C.F.R. §§ 1.16-1.17, or credit any overpayment, to Deposit Account No. 19-0741. Should no proper payment be enclosed herewith, as by a check being in the wrong amount, unsigned, post-dated, otherwise improper or informal or even entirely missing, the Commissioner is authorized to charge the unpaid amount to Deposit Account No. 19-0741. If any extensions of time are needed for timely acceptance of papers submitted herewith, Applicant hereby petitions for such extension under 37 C.F.R. §1.136 and authorizes payment of any such extensions fees to Deposit Account No. 19-0741.

Respectfully submitted,

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